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Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 574.

GENERAL MOTORS ACCEPTANCE CORPORATION, *et al.*,

vs.

THE UNITED STATES OF AMERICA.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR INTERVENOR-APPELLANT BELOW.

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AGAINST

THE UNITED STATES OF AMERICA

BRIEF FOR INTERVENOR-APPELLANTS BELOW, ON CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement.

The automobiles involved in these cases were observed crossing the Mexican border by customs officials. After the automobiles had been driven some short distance into the United States, they were stopped and seized by those officials, and the Government then instituted forfeiture proceedings against the vehicles by libels under Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Sec. 482, 483), which provide for forfeiture under the Customs Laws. The intervenors are assignees of the conditional vendors of the vehicles in question, and, as innocent lienors, interposed petitions for the dismissal of the libels, contending that the forfeitures should have been prosecuted under Section 26, Title II, of the National Prohibition Act (c. 85, 41 Stat. 305, 315; U. S. C., Title 27, Sec. 40), rather than under the Customs Act. The petitions of the intervenors were denied by the District Court and the automobiles ordered forfeited under the libels of the Government. On appeal, the Circuit Court of Appeals for the Ninth Circuit certified these questions to this Court.

The Question at Issue—Origin and Development.

The main question at issue in these cases is whether in this situation the Government is or is not bound, by the apparently mandatory provisions of Section 26 of the National Prohibition Act, to proceed under that section in libels for forfeiture, whenever a vehicle is seized in the act of transporting intoxicating liquor contrary to law, or whether the Government may disregard the provisions of Section 26, which protects the interests of an innocent lienor, and bring the libels for forfeiture under the Customs Act Sections 3061-2, which confiscate the interests of the innocent lienor.

For many years prior to the National Prohibition Act and, in fact, prior to the existence of automobiles or the relatively widespread use of conditional sale liens, the interests of innocent lienors cut no figure in cases of forfeiture of vehicles for transportation of liquor contrary to law, because forfeiture was absolute whether it was decreed in a libel under Sections 3061-2 of the Customs Law, for unlawful importation of liquor in violation of the customs duties levied thereon under the Act, or under Section 3450 of the Internal Revenue Law for evasion of the internal revenue taxes applicable to liquor.

The National Prohibition Act continued the policy of confiscating vehicles used as devices to violate it, but with the very significant change that Section 26, Title II, concerning such forfeitures, provides that the interests of innocent lienors in such vehicles are to be saved.

Following the National Prohibition Act, the Government proceeded to the enforcement not only of the Prohibition Act, but also of the Internal Revenue and Customs Laws. The seizure of automobiles for violation of the provisions of those laws immediately brought into collision the respective forfeiture provisions, namely, Section 26, Section 3450

and Sections 3061-2. The question whether the Government might properly choose to proceed under any one of those sections, or whether it was bound, in forfeiture cases, to proceed under Section 26 of the Prohibition Act, was litigated more prominently in connection with Section 3450 under the Internal Revenue Laws. As suggested in the statement of the Court below in its certificate (4), this was settled by the unanimous decision of this Court in the case of *Richbourg Motor Co.* v. *United States,* 281 U. S. 528, dealing with the relation of Section 26 of the Prohibition Act and Section 3450 of the Internal Revenue Act, to the effect that the confiscation and forfeiture of vehicles used for the transportation of intoxicating liquor must, as between them, be conducted under the provisions of Section 26. It did not specifically dispose of the relation, in cases of transportation of liquor by vehicles, of Section 26 of the Prohibition Act and Sections 3061-2 of the Customs Laws.

More specifically, therefore, the question may be said to be whether the same or similar considerations which constitute the basis of the decision in the *Richbourg Motor Co.* case render the forfeiture of vehicles under Section 26 of the Prohibition Act, as against proceedings under the forfeiture provisions of the Customs Law, just as mandatory as they have been determined with respect to Section 3450.

ARGUMENT.

In connection with the forfeiture of vehicles for transporting liquor across the Border, Sections 3061-2 are as thoroughly in conflict with Section 26 as is Section 3450.

As in the *Richbourg* case, *supra*, this question resolves itself essentially into the problem of ascertaining the purpose and intention of Congress from its expressions in the material statutes.

The National Prohibition Act, Section 12, forbids the manufacture, sale, transportation, *importation* and exportation of intoxicating liquor, except as authorized in the Act. By drawing to itself the importation of intoxicating liquor among the other prohibitions, the Act plainly and expressly condemns importation with the same force applied to the others. The importation of forbidden liquor by transportation of it in a vehicle driven across the border is a clear violation of the Prohibition Act, and therefore brought within the orbit of its penalties, one of which is forfeiture, under the provisions of Section 26, of the vehicle used in the illicit transportation. Both the provisions and policy of the National Prohibition Act are offended thereby, and once within the scope of the Act, the manner of forfeitures of vehicles so used is specified in Section 26. Here, in other words, is a single, complete, coherent system for the suppression of the liquor traffic, whether manifested by manufacture, transportation or importation. The sweeping and comprehensive language of Section 26, alluded to by this Court in the *Richbourg* case, is an example. It preempts the field of transportation, making no refinements or allowances for distinctions. It unequivocally provides that

> "* * * when * * * any officer of the law shall discover any person in the act of transporting, in viola-

> tion of the law, intoxicating liquors * * * he shall take possession of the vehicle * * * shall at once proceed against the person arrested, and upon the conviction of such person shall sell the vehicle and pay all liens according to their priorities."

It is submitted that it is against the background of the single system represented by that Act that the relation of the sections of the other laws affecting intoxicating liquors to it should be judged.

With the passage of the National Prohibition Act, the question naturally arose whether it had, by necessary implication, repealed the internal revenue taxes and the customs duties on the forbidden liquor. The incongruity of an obligation to pay a tax on an article, the possession or importation of which had become unlawful, led to this Court's decision, in *United States* v. *Yuginovich*, 256 U. S. 451, that the Revenue Laws pertaining to liquor fell before the Prohibition Act.

In 1921, shortly following that decision, Congress passed the so-called Willis-Campbell Act (c. 134, 42 Stat. 222, 223) which, it will be noted, is an act supplemental to the National Prohibition Act, in terms as follows:

> "Effect on Existing Legislature. All laws in regard to the manufacture and taxation of and traffic in intoxicating liquor and all penalties for violation of such laws that were in force on October 28, 1919, shall be and continue in force as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of this title; but if any act is a violation of any such laws and also of this title, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other" (Section 5).

The situation then is that, not by any force of their own (*United States* v. *Yuginovich, supra*), but rather by virtue of the section of the Willis-Campbell Act just quoted, the penalty provisions, such as Sections 3061-2 of the Customs Laws and Section 3450 of the Internal Revenue Laws, in force when the Prohibition Law was enacted, were con-

tinued in force, but only if and to the extent that they are not in conflict with the penalty or forfeiture provisions of the Prohibition Act. The question of the inconsistency of the two sets of penalty or forfeiture provisions rests clearly on the purpose of Congress as reflected in the Willis-Campbell Act. That statute is the connecting link provided by Congress and throws light, for example, on such portion of the Tariff Law subsequently passed by Congress as pertains to intoxicating beverages.

It seems clear, in the light of the scope and terms of the National Prohibition Act passed two years before for the suppression of liquor traffic, that both the purpose and effect of the Willis-Campbell Act were the consolidation, into the National Prohibition Law and system, of the other laws, as far as they related to the specific practices or acts condemned by the Prohibition Act. To that extent, the other laws were made subsidiary to national prohibition and became members of the system created to render unlawful the manufacture, transportation or importation of liquor.

That this is the proper interpretation of Congressional intent is strengthened by the fact that the Willis-Campbell Act is supplemental to the National Prohibition Law, and that in it Congress was careful to limit the revival of the other laws to those not in conflict with the Prohibition Laws. Having forbidden, among other things, the transportation and importation of liquor and set up the machinery, in transportation cases, under Section 26 for the forfeiture of vehicles, but with the expressed policy of recognizing the interests of innocent lienors in such vehicles, Congress, in the important exception made in the Willis-Campbell Act, gave expression to its purpose, that in the field of liquor traffic the provisions of the National Prohibition Law shall be not only dominant, but controlling. The Willis-Campbell Act serves to add the other laws to the National Prohibition Act to enlarge its authority and opportunities for accomplishing its object. Its plain language is directed toward the violation of the liquor laws. Such is the effect of the decision in the *Richbourg* case with respect to Section 3450,

and, in view of the scope of the Prohibition Act, there is no reason for any distinction regarding Sections 3061-2 of the Tariff Laws. On that basis, violations of the Customs Laws, as well as of the Internal Revenue Laws, which consist of importation and transportation of liquor sufficient to invoke the forfeiture provisions of Section 26 of the Prohibition Law, must be dealt with under the latter. In that manner only is it possible to effectuate the obvious purpose of Congress in Section 26 to respect, in relation to vehicles such as automobiles used in the transportation of liquor contrary to the law, the interests of innocent lienors under conditional sales of automobiles for example, in recognition of the commercial existence and growth of those interests which were not a factor at the time of adoption of the other two forfeiture sections, and of the fact that there is no violation of the liquor laws by the innocent lienors and that therefore the penalty should not be directed against them.

If this construction is sound to this point, it is not an answer to it that either under the decision of this Court in *United States* v. *Stafoff*, 260 U. S. 477, or under the pertinent schedule of subsequent Tariff Acts, liquors are taxable. In the *Stafoff* case, the Willis-Campbell Act was held by this Court to overthrow the effect of its decision, in the *Yuginovich* case, on the fate of taxes on intoxicating liquor under the old laws and to revive them, and in the Tariff Act of 1922 Congress retained the schedule on liquors. Not only, however, did Congress clearly manifest in Section 5 of the Willis-Campbell Act its differentiation between the revival of the old taxes on intoxicating liquor and the penalties which might conflict with those provided in the Prohibition Act, but there is also no necessary relation between the continuation of the old taxes and the purpose of limiting the forfeiture procedure and rights, as applied to vehicles used in transportation, to Section 26. With the object of increasing the burden of persons violating the Customs Law by transporting liquor across the border, as well as subjecting the vehicle used in that act to for-

feiture for the violation of the Prohibition Law, Congress may be said to have retained the duty on the liquors specifically prohibited from importation under the Prohibition Act. In that connection, there is some significance in the provision of the Tariff Act that it should apply to articles forbidden to be imported into the United States, indicating Congress' mindfulness of the scope of the Prohibition Law in that respect. It will be observed also that the result of the revival of the old taxes on liquor by the Willis-Campbell Act, under the Stafoff decision, did not influence this Court's decision in the *Richbourg* case with respect to the control of the forfeiture provisions under Section 26 over those under Section 3450.

Nor is it an answer that Congress failed to repeal Sections 3061-2 under the Tariff Laws. There is also no distinction at this point between Section 3450 and Sections 3061-2, because in the *Richbourg* case it was similarly a fact that Congress failed to repeal Section 3450. The failure of repeal does not signify that Congress intended those sections to have coordinate authority with Section 26. It is more consistent with the language of the latter and of the Willis-Campbell Act, that Congress believed it to cover all cases of transportation, including importation, and that Congress believed the language of the Willis-Campbell Act bearing on liquor laws inconsistent with the provisions of the Prohibition Act adequate to obligate Government officials to prosecute their libels under Section 26 in liquor transportation cases, and left Sections 3061-2 standing for application to other violations of the Customs Law.

The construction and conclusion here urged have been accepted as the more reasonable ones in several Federal cases.

United States v. *Ford Coupe Automobile,* 43 Fed. (2d) 212;

United States v. *One Studebaker,* 45 Fed. (2d) 430;

The Sebastopol, 47 Fed. (2d) 336;

Colon v. *Hanlon,* 50 Fed. (2d) 353.

The situation in several cases in which the Government was permitted to proceed under Sections 3061-2 was that there was no evidence of transportation.

United States v. *Cahill*, 13 Fed. (2d) 83;
United States v. *One Reo Coupe Automobile*, 46 Fed. (2d) 815.

Dated, New York, N. Y., April 1, 1932.

Respectfully submitted,

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